

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HERITAGE REALTY MANAGEMENT, :
INC., :

Plaintiff :

vs. :

CASE NO. CA 04-333 ERIE

JOHN ALLIN d/b/a ALLIN :
COMPANIES, :

Defendant :

JUDGE SEAN MCLAUGHLIN

Deposition of JOHN ALLIN, taken before and
by Carol A. Holdnack, RPR, Notary Public in and for
the Commonwealth of Pennsylvania, on Monday,
January 23, 2006, commencing at 9:02 a.m., at the
offices of Knox McLaughlin Gornall & Sennett, P.C.,
120 West Tenth Street, Erie, PA 16501.

For the Plaintiff:

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Reported by Carol A. Holdnack, RPR
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<p style="text-align: right;">Page 29</p> <p>1 what was formally Snow Management Group and is now part of 2 Symbiot's organization here in Erie? I read some articles 3 that there's been a contraction or reshuffling of 4 responsibilities with stuff being transferred over to Salt 5 Lake City. 6 A. I have not been in the building in a while. My 7 employment came to an end there December 15th. They have 8 downsized severely and considerably, and I'm probably not 9 the right person to ask that question of. 10 Q. Is it your understanding, though, that the 11 principal operations that were here in Erie have since been 12 transferred to Salt Lake? 13 A. Not yet, but they're in the middle of 14 transitioning that. 15 Q. What were the circumstances surrounding the end of 16 your employment with Symbiot on or about December 15th? 17 A. Symbiot felt that I was not meshing with the 18 culture in Salt Lake, and that it would be best if I pursued 19 other endeavors, and I agreed. 20 Q. Did you have an employment agreement following the 21 acquisition by Symbiot? 22 A. I did. 23 Q. And I take it, it was terminable on certain 24 conditions, either party or Symbiot had the right to 25 terminate on notice or upon payment of an amount?</p>	<p style="text-align: right;">Page 31</p> <p>1 we would need to become properly capitalized in order to 2 continue that growth. So there was an effort made to engage 3 either a venture partner or to allow someone to acquire a 4 portion of the business to provide us with the capital that 5 we would need. 6 Q. Were you experiencing financial problems in 7 connection with the operation of the Snow Management Group 8 when you started looking for a venture capital partner or a 9 strategic buyer? 10 A. No. 11 Q. Were you paying debts as they came due? 12 A. Yes. 13 Q. Did that include debts to your subcontractors? 14 A. Yes. 15 Q. At any time between February of 2004 when you 16 started looking for a strategic buyer and the date you 17 entered into the Heritage contract, did you fall into 18 arrears with a significant portion of your subcontractors? 19 A. We did fall into arrears, but not with a 20 significant portion of our subcontractors. We had thought 21 we had an arrangement to be acquired, and that did not come 22 to fruition. And by the time that had taken place, the 23 original purchaser decided against going through with the 24 agreement. By that point, we had fallen behind by 25 approximately 3.6 million to service providers only. All</p>
<p style="text-align: right;">Page 30</p> <p>1 A. Yes, that's essentially correct. 2 Q. What was the nature of the transaction between you 3 as the proprietor of Snow Management Group and Allin 4 Companies and Symbiot? In other words, was it an asset 5 purchase agreement, was it a -- what was it? 6 A. They purchased assets and certain liabilities as 7 it related to the snow business. They did not purchase any 8 landscape, irrigation, deck, any of that work. 9 Q. When did that asset purchase occur? 10 A. The closing was on November 22nd of '04. 11 Q. When did you start negotiating with Symbiot 12 regarding that transaction? 13 A. September of '04. 14 Q. Had you been looking for a strategic buyer for 15 portions of your business prior to September of '04? 16 A. Yes. 17 Q. When did those efforts start? 18 A. February -- February of '04. 19 Q. What prompted you to decide to look for a 20 purchaser of some or all of the business? 21 A. We had been growing expedientially since the 22 Olympic project. And we had been growing from cash flow. 23 It became apparent in the winter of '03/'04 that in order to 24 continue to sustain the type of growth that we were 25 experiencing and anticipated, that we would need capital or</p>	<p style="text-align: right;">Page 32</p> <p>1 other debts were paid on time and were current. 2 Q. Who was the original anticipated purchaser of the 3 business? 4 A. We had had conversations with a number of 5 different individuals and entities. And I had been trying 6 to educate a number of different people about the snow 7 industry. And at the same time I had engaged an engineering 8 firm to design a snow melter that we wanted to use. And 9 that -- the parent company of that entity was interested in 10 acquiring all of SMG. 11 Q. Prior to Symbiot, did you have a letter of intent 12 from anyone to purchase the business, or a portion of the 13 business? 14 A. I don't know if we ever had an actual letter of 15 intent. 16 Q. I may have misinterpreted your testimony a few 17 moments ago, Mr. Allin. But I was under the impression that 18 the discussions were fairly serious with at least one or 19 more potential buyers. Would that be a fair assessment of 20 your testimony? 21 A. Yes, sir. 22 Q. What was the name of the potential purchasers with 23 which you had serious negotiations? 24 A. It was Park Ohio Holdings Company in Cleveland. 25 Q. Anyone else?</p>